IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/09/2002

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.34072 of 2002 and W.P.No. 34084 of 2002
and
W.P.M.P.Nos.50381, 50477, and 50478 of 2002

R.Jeyaratchagan .. Petitioner
in both WPs

-Vs-

1. The Chief Educational Officer
Sivaganga District, Sivaganga.

2. The District Educational Officer
Sivaganga Education District
Sivaganga.

3. The Management
S.Rm.Ramanathan Chettiar Higher
Secondary School, Nattarasankottai
Sivaganga.

4. A.R.Sundaram .. Respondents
in both WPs

PRAYER: Petitions under Article 226 of the Constitution of India for issue of a writ of Certiorari as stated therein.

For Petitioner : Mr.K.Chandru
Senior Counsel

For Respondent : .....

:ORDER

Both the writ petitions are filed by the same petitioner against the same respondents.

2. Admittedly, due to certain disputes among the Board of Directors of the management of the third respondent-Higher Secondary School, the administration of the school was entrusted with the second respondent, by proceedings dated 9.11.1999 of the Director of Education, conferring the following powers on the second respondent:

a.Granting leave to the staff and employees of the school.
b.Approval and disbursement of amounts with regard to P.F., festival allowance, Cooptex Advance, marriage advance, etc.
c.Signing in the forms and applications relating to P.F. savings, transfer and settlement of accounts of the employees and staff.
d.Entering the necessary particulars and signing in the matters relating to the retirement of employees, their salary fixation, their selection grade and special grade fixation, etc.
e.Relieving the employees on their resignation or retirement in accordance with rules.

3. On an alleged charge of misappropriation of monies meant for Adi Dravida students, and for mismanagement of the administration of the third respondent-Higher Secondary School, disciplinary action was initiated against the fourth respondent, who was acting as the Headmaster of the third respondent-Higher Secondary School, and in pursuance of such disciplinary action the fourth respondent was terminated from service from 4.1.19969, and consequently the writ petitioner herein was made in-charge of the post of Headmaster of the third respondentHigher Secondary School, against which the fourth respondent had preferred an appeal on 5.4.1999 to the Joint Registrar of School Education (Higher Secondary). As no orders were passed on the appeal dated 5.4 .1999 alleged to have been preferred by the fourth respondent, the fourth respondent moved this Court in W.P.No.20972 of 2000 seeking a writ of Mandamus to direct the respondents therein to allow the fourth respondent herein to work as Headmaster of the third respondentHigher Secondary School and to pay salary to the fourth respondent from January, 1999, by considering his appeal dated 5.4.1999 made to the Joint Director of School Education (Higher Secondary), contending that his order of termination is illegal and contrary to law, for want of prior approval from competent authority contemplated under Section 22 (1) of the Act.

4. This Court by order dated 10.7.2002 in W.P.No.20972 of 2000 directed as under:

(i)The petitioner shall make a representation before the second and third respondents within a period of two weeks from the date of receipt of a copy of this order;
(ii)The second and third respondents shall consider the representation of the petitioner and dispose of the same on merits and in accordance with law within an opportunity for the petitioner to be heard within a period of four weeks thereafter.

5. It is not in dispute that the third respondent-Higher Secondary School, in these writ petitions is also a party to the said writ petition No.20972 of 2000 and the order dated 10.7.2002 was passed only after hearing the third respondent-Higher Secondary School Management. However, the third respondent-Higher Secondary School Management had not preferred any appeal against the said order dated 10.7.2002.

6. Pursuant to the above directions of this Court dated 10.7.2002 in W.P.No.20972 of 2000, the second and third respondents therein, who are the

first and second respondents respectively in these writ petitions, passed proceedings dated 12.8.2002 and 26.8.2002, which are impugned in W.P.No.34084 of 2002 and W.P.No.34072 of 2002 respectively.

7. In this regard, it is relevant to mention that the first respondent-Chief Educational Officer is also holding the office of the second respondent-District Educational Officer (Incharge).

8. By proceedings dated 12.8.2002, which is impugned in W.P.No.34084 of 2002, the first respondent reinstated the fourth respondent, who was terminated from the post of Headmaster of the third respondentHigher Secondary School from 4.1.1999 holding that fourth respondent was terminated without prior approval of the first respondent herein, as contemplated under Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as the ' Act'), and directed the third respondent-Higher Secondary School and the writ petitioner to hand over the charge of the Headmaster to the fourth respondent herein with all back wages.

9. Pursuant to the proceedings dated 12.8.2002 of the first respondent (who is also incharge of the office of the second respondent), by proceedings dated 26.8.2002, the first respondent directed the third respondent-Higher Secondary School and the petitioner herein to give effect to the proceedings dated 12.8.2002, as the writ petitioner was holding the post of Headmaster of the third respondent-Higher Secondary School only as an incharge due to the termination of the fourth respondent and therefore, the petitioner is not entitled to continue as a Headmaster in view of the reinstatement of fourth respondent by proceedings dated 12.8.2002, and further directed the third respondent-Higher Secondary School to take appropriate action against the writ

petitioner if he fails to hand over the charge to the fourth respondent as per the proceedings dated 12.8.2002 of the second respondent. Hence these writ petitions.

10. These writ petitions were taken up for joint hearing as the proceedings impugned in these writ petitions are relating to the same subject, viz., the reinstatement of fourth respondent as Headmaster of the third respondent-Higher Secondary School as he was terminated from the post of Headmaster of third respondent-Higher Secondary School without prior approval of the Chief Educational Officer/first respondent herein as contemplated under Section 22(1) of the Act.

11. In view of the common issue involved in both these writ petitions, Mr.K.Chandru, learned senior counsel for the petitioner seeks permission of this Court to withdraw W.P.No.34072 of 2002 wherein the petitioner challenged the proceedings dated 26.8.2002 of the first respondent which is only consequential to the proceedings dated 12.8.2002 of the second respondent. Permission granted. Hence W.P.No.34072 of 2002 is dismissed as withdrawn.

12. With regard to W.P.No.34084 of 2002, challenging the proceedings dated 12.8.2002 of the first respondent, (who is also incharge of the office of the

second respondent), Mr.K.Chandru, learned senior counsel contends that:

i.the second respondent cannot claim any other powers except those conferred specifically by the aforesaid order dated 9.11.1999 of the Director of Education, referred to above, and under the Act;

ii.the order of reinstatement or direction to the writ petitioner to hand over the charge of the post of Headmaster to the fourth respondent cannot be legally passed by the first and second respondents herein, even assuming the termination of fourth respondent was illegal, as the only competent authority to sit on judgment of the order of termination of the third respondent-Higher Secondary School terminating the services of the fourth respondent is the Joint Director of School Education (Higher Secondary) as per the provisions of the Act, in as much as the first respondent-Chief Educational Officer is only an approving authority under the Tamil Nadu Recognised Private School (Regulation) Rules, 1974 (hereinafter referred to as the 'Rules'), and therefore, the impugned order is without jurisdiction and arbitrary, and therefore proceedings dated 26.8.2002 of the first respondent is also liable to be assailed.

13. I am unable to appreciate either of the contentions of Mr.K. Chandru, learned senior counsel appearing for the petitioner.

14.1. It is not in dispute that the impugned proceedings dated 12.8.2002 passed by the first respondent, who is also incharge of the office of the second respondent, has a reference to the proceedings of the Joint Director of School Education (Higher Secondary) and also the orders of this Court dated 10.7.2002 made in W.P.No.20972 of 2000, to which, admittedly, the Joint Director of School Education (Higher Secondary) as well as the third respondent-Higher Secondary School Management are parties, wherein this Court directed the Chief Educational Officer and District Educational Officer to consider the representation of the petitioner therein (fourth respondent herein) and pass orders.

14.2. If the direction issued by this Court by order dated 10.7.2002 in W.P.No.20972 of 2000 is contrary to the provisions of the Act, the third respondent-Higher Secondary School Management could have challenged the same, but the third respondent-Higher Secondary School Management had not chosen to challenge the said order.

14.3. Pursuant to the directions of this Court dated 10.7.2002 in W.P.No.20972 of 2000 and with reference to the proceedings of the Joint Director of School Education (Higher Secondary), the first respondent-Chief Educational Officer verified the entire records relating to the termination of the fourth respondent and having satisfied that the same is not valid in law for want of prior approval of the competent authority, namely the Chief Educational Officer himself, passed proceedings dated 12.8.2002, which is impugned in the above writ petition.

15.1. In this regard, I am obliged to refer Section 22(1) of the Act, which reads as follows:

"Section:22 - Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools:
(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority."

15.2. Since the first respondent-Chief Educational Officer was satisfied that the termination of the fourth respondent from the third respondent-Higher Secondary School was without his approval, the competent authority is entitled to direct the third respondent-management to reinstate the fourth respondent as Headmaster of the school by exercising the power vested on him under Section 22(1) of the Act.

15.3. When a power is conferred on the first respondent-Chief Educational Officer to grant prior approval to dismissal or removal or termination of a teacher or other persons employed in private schools under Section 22(1) of the Act, such power also includes the power to refuse such prior approval contemplated under Section 22(1) of the Act. While refusing to grant prior approval as contemplated under Section 22(1) of the Act, the first respondent is impliedly empowered to give direction to reinstate the teacher, who is dismissed or removed or terminated from service for want of prior approval of the said competent authority. That apart, if and when such want of prior approval contemplated under Section 22(1) of the Act is brought to the notice of the competent authority, the first respondent-competent authority shall also be empowered, by implication, t o set aside the order of dismissal or removal or termination of teacher, for want of prior approval by the competent authority and therefore, I do not see any arbitrary exercise of power or lack of jurisdiction in passing the impugned proceedings dated 12.8.2002 by the first respondent-competent authority, more particularly when the fourth respondent contends that his very order of termination dated 4.1.1999 lacks prior approval of the competent authority contemplated under Section 22(1) of the Act and hence the same is illegal and contrary to Section 22(1) of the Act and is liable to be held as null and void. I am satisfied that the first respondent, who is also incharge of the office of the second respondent, has rightly exercised the powers conferred on him under Section 22(1) of the Act in setting aside the order of termination for want of prior approval contemplated under Section 22(1) of the Act and directing the third respondent-Management as well as the writ petitioner to hand over the charge of the post of Headmaster to the fourth respondent, as the petitioner is holding the post of Headmaster as incharge only by way of an interim arrangement and his appointment to the post of Headmaster is yet to be regularised and approved by the competent authority, viz., the first respondent.

15.4. That apart, I am also of considered opinion that the powers conferred on the first respondent to give prior approval to the order of dismissal or removal or termination also entitles the delinquent to represent to the competent authority for his intervention to verify whether such prior approval was granted by the competent authority. In the instant case, when such a representation was made notwithstanding the appeal alleged to have been

filed by the fourth respondent to the Joint Director of School Education (Higher Secondary), the first respondent-Chief Educational Officer, who is competent authority under Section 22(1) of the Act can still exercise his power to verify the relevant records as to whether the prior approval of the competent authority contemplated under Section 22(1) of the Act has been granted or not, particularly when a direction given by this Court by order dated 10.7.2002 in W.P.No.20972 of 2000, itself has become final. If the first respondent-Chief Educational Officer satisfies that the third respondent-Management has not obtained the prior approval as contemplated under Section 22(1) of the Act while terminating the fourth respondent, the first respondent-Chief Educational Officer can further give consequential direction in the matter. Therefore, the fourth respondent need not necessarily pursue his remedy before the appellate authority, particularly when he has approached this Court in W.P.No.20972 of 2000, wherein this Court by order dated 10.7.2002 directed the first and second respondents herein to consider the representation of the fourth respondent herein dated 5.4.1999 and pass appropriate orders, which had admittedly become final.

15.5. The power conferred under Section 22(1) of the Act on the competent authority, namely the first respondent, to grant or refuse prior approval for dismissal or removal or termination of a teacher working in a private school, impliedly includes the power to verify whether such prior approval has been obtained by the third respondentmanagement while terminating the fourth respondent, if and when such competent authority is directed to go into such matter by an order dated 1 0.7.2002 in W.P.No.20972 of 2000. On a representation from the delinquent-teacher, if the competent authority after the perusal of the records satisfies that the requirement contemplated under Section 22(1) has not been complied with, the competent authority can certainly direct the management to reinstate the delinquent with back wages, in as much as the power to grant prior approval is also power to refuse prior approval, which in turn has powers to pass orders of reinstatement with back wages.

15.6. That apart, the competent authority is also entitled to comply with any of the directions issued under the provisions of the Act, as failure to comply with any of the directions entitles the competent authority to withdraw the recognition itself, as per Section 12(1) of the Act, which reads as follows:

"Section:12 - Withdrawal of recognition by competent authority:
(1) The competent authority may withdraw permanently or for any specified period the recognition of any private school:
(i) which does not comply with any of the provisions of this Act or any Rules made or directions, issued there under, in so far as such provisions, rules, or direction are applicable to such private school, or
(ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or
(iii) which contravenes or fails to comply with any such conditions as may be prescribed."

(emphasis supplied)

15.7. In any event, when it is apparent on the face of the records that the order of termination of the fourth respondent from 4.1.1999 is in gross violation to Section 22(1) of the Act for want of prior approval of the competent authority, I do not find any error in passing of the impugned proceedings by the first respondent, tracing his powers conferred under Section 22(1) of the Act, in order to give effect to Section 22(1) of the Act in spirit and substance, and to achieve the object of the legislature enshrined thereunder.

16.1. For all the above reasons, I find no substance in the contentions of the learned senior counsel for the petitioner to agitate against the directions of the first respondent directing the writ petitioner to hand over the charge of post of Headmaster, in as much as the writ petitioner was holding the post of Headmaster as in charge, only by an interim arrangement, due to the termination of service of the fourth respondent, but not as a regular Headmaster, as he was neither made a regular Headmaster nor his posting was approved by the Educational Authorities.

Finding no substance in the contention of the learned senior counsel for the petitioner, this writ petition is dismissed. No costs. Consequently, connected W.P.M.Ps. are also dismissed.
05.09.2002
Index : Yes
Internet : Yes

sasi

To:

1. The Chief Educational Officer
Sivaganga District, Sivaganga.

2. The District Educational Officer
Sivaganga Education District
Sivaganga.

P.D.DINAKARAN,J.